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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,647	06/18/2001	William T. Sherrill	2001US003	1838

25255 7590 06/25/2004

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EXAMINER

FRANK, ELLIOT L

ART UNIT PAPER NUMBER

2125

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/883,647

Applicant(s)

SHERRILL ET AL.

Examiner

Elliot L Frank

Art Unit

2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-21,24-27 and 29-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-21,24-27 and 29-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4 May 2004 has been entered.

Response to Amendment

2. The following action is a non-final response to the applicant's after-final amendment filed 4 May 2004.
3. Corrections or explanations presented by the applicant in response to the specification objections and/or 35 USC 112 rejections cited in the previous office action have been considered and are accepted.
4. Claims 1-6,8-21,24-27, and 29 remain pending from the previous office action.
 - (a) Claims 7 and 28 were cancelled in this amendment.
 - (b) Claims 30 and 31 were added in this amendment and are now considered.

Response to Arguments

5. Applicant's arguments with respect to claim 1-6,8-21,24-27, and 29 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1,2,4-8,11-13,15-18,20,21,25-27 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shakespeare et al. (USPN 6,272,440 B1) in view of Lawn et al. (US 2002/0042842 A1).

The limitations of the aforementioned claims, as well as the relevant citations in Shakespeare et al., are as follows:

1. A method for color management by a retailer comprising the steps of:
choosing an engineered color standard (ECS) where the ECS includes at least reflectance data (column 2, lines 25-45);
[communicating the ECS to a product vendor;]
having a product produced using the ECS; and
controlling a product's color quality by generating reflectance data for the product and comparing the reflectance data of the ECS to the reflectance data of the

product. (control of production of based on color is read at column 19, line 27-column 20, line 33).

Claim 2 includes the same functional limitations as claim 1 with the additional requirement wherein the ECS and the product have at least one component selected from the group consisting of reflectance data and a dye specification. This requirement is read at column 20, lines 34-62.

31. The method of claim 30 wherein controlling the product's color by comparing the ECS to the produced product further comprises at least one method selected from the group consisting of: visually inspecting, visually inspecting under a single light source, visually inspecting under multiple light sources, electronically inspecting (column 20, lines 6-62).

While Shakespeare et al. is system for controlling the color characteristics of a manufactured product based on a color standard, it does not specifically read upon or encompass the additional requirements of the aforementioned claims dealing with the communication of product information from a customer to a vendor.

Lawn et al., analogous to Shakespeare et al. in that it is a generally applicable color selection system used to determine a color recipe from a color standard (page 1, paragraph 0002), reads on the additional requirements of the previously indicated claims as follows:

The requirement of claim 1 for communicating the ECS to a product vendor is read in Lawn et al. at page 1, paragraphs 0002-0006, wherein Lawn et al discusses

in the background of the invention a typical process by which a customer chooses the coloration of goods using a prediction algorithm provided by a merchant.

Claims 4 and 5 requiring the selection of color during the design of a product using computer aided color matching techniques is read at page 1, paragraphs 0002-0004 wherein a typical color specification is described.

6. The method of claim 1 wherein communicating the ECS to the product vendor further comprises at least one method selected from the group consisting of: physically sending the ECS, electronically sending the ECS, posting the ECS at a website (page 2, paragraphs 0015-0019).

8. The method of claim 1 wherein communicating the ECS to the product vendor is at least one textile vendor selected from the group consisting of: a cut and sew shop, a fabric mill, and a dye house (pages 1-2, paragraph 0013).

Claims 17 and 30 have the same functional requirements as claim 1, and are therefore obvious in view of the same citations in the combined references.

Claims 11,20 and 25 have the same functional requirements as claim 4, and are therefore obvious in view of the same citations in the combined references.

Claims 12,21 and 26 have the same functional requirements as claim 5, and are therefore obvious in view of the same citations in the combined references.

Claims 13,16 and 27 have the same functional requirements as claim 6, and are therefore obvious in view of the same citations in the combined references.

Claims 15,18 and 19 have the same functional requirements as claim 8, and are therefore obvious in view of the same citations in the combined references.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the elements of Lawn et al. into Shakespeare et al. to have provided system which allows a user access to automated tools which provide algorithms for color recommendation or formulation (page 1, paragraphs – 0007-0008).

8. Claims 3,9,10,14,19 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shakespeare et al. (USPN 6,272,440 B1) in view of Lawn et al. (US 2002/0042842 A1) as applied to claims 1,2,17 and 30 above, and further in view of Breault (USPN 5,131,910 A).

Claim 3 depends from claim 1. Claim 1 is obvious in view of the previously presented combined references.

The combination of Shakespeare et al. and lawn et al. does not read on the additional requirements of claim 3 as follows:

The method of claim 1 wherein the at least one component of the ECS further comprises a component being selected from the group consisting of dyestuff, dye specification, dyeing procedures, finishes, finishing procedures, preparation chemicals, preparation processes.

Breault, analogous to the previously cited references in that they all concern industrial color selection and control (Breault, column 1, lines 6-13), reads on the requirements of claim 3 at column 4, lines 16-47 wherein it demonstrates how an (L),(a),(b) standard is used to specify dye for controlling the color of product.

Claim 10,19 and 24 include the same functional limitations and claim 3, and therefore are obvious in view of the same citations in the combined references.

Claim 9 includes the same functional limitations and claims 1 and 3 combined, and therefore is obvious in view of the same citations in the combined references.

Claim 14 has the same functional limitations as claim 31 rejected above and is also rejected for the same citations in the combined reference.

It would have been obvious to have combined the elements of Breault into the previously combined references to have created a system that could control the addition of dye to a product in order to achieve the optical properties desired (column 4, lines 37-47).

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

USPN 4,843,574 – Gerber – Color Specification

USPN 5,668,633 A – Cheetam et al. – Color Specification

USPN 5,082,529 A – Burk – Color Control

USPN 5,740,079 A – Shigemore et al. – Color Control

USPN 6,349,300 B1 – Graf et al. – Color Specification

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elliot L Frank whose telephone number is (703) 305-5442. The examiner can normally be reached on M-F 7-4:30, 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo P Picard can be reached on (703) 308-0538. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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ELF
June 23, 2004

Albert W. Paladini 6-24-04
ALBERT W. PALADINI
PRIMARY EXAMINER